

**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

WUBE YOSEPH GOBENA,

Appellant.

No. 63174-8

DIVISION ONE

UNPUBLISHED OPINION

FILED: April 19, 2010

Leach, J. — Wube Yoseph Gobena challenges his conviction of second degree theft as an accomplice. He argues that insufficient evidence supports his conviction because the record shows only his presence at the scene of the crime and does not show his intent to facilitate the thefts of two digital cameras and a pair of tennis shoes. We disagree and affirm. Because the State presented ample evidence establishing that Gobena was not only present at the crime scene but also actively assisting the principal in carrying out the thefts, sufficient evidence supports his conviction.

**Facts**

On March 30, 2008, Costco loss prevention officer Shelly Hernandez was on the store floor monitoring for shoplifters. She observed Gobena and Zenebe Worota standing at the opposite ends of a shopping cart. At one end of the cart,

Gobena was propping up a large package on the edge of the cart with his body. Hernandez, who has worked 10 years in the loss prevention field, recognized this behavior as “blocking,” so she directed her attention to the other end of the cart. There, she saw Worota cut open a package with a sharp tool, remove a digital camera from the packaging, and put it in his pocket. Worota then tossed the packaging behind a pallet of goods.

Hernandez called Don Hildwein on her cellular phone for backup. Hildwein, a cashier whose duties included providing assistance to loss prevention staff, maintained phone contact with Hernandez and identified Gobena and Worota on the store floor. From separate locations, Hernandez and Hildwein both saw the defendants walk down another aisle before Worota reached into the cart containing several items and retrieve a package. Hernandez identified this tactic as “nesting.” With Gobena again acting as a blocker, Worota cut open a second package, removed a camera, and pocketed it. Worota discarded the camera packaging behind another pallet of goods.

The defendants then began walking toward the cashiers, and Hernandez called 911. The men paid for the various items in the cart, but not for the cameras in Worota’s pockets. At this time, Hernandez and Hildwein contacted the defendants and escorted them to the security office where they were separated. Hernandez confronted Worota first, asking him to empty his pockets and to hand over any unpaid items. Worota produced one of the cameras and the knife blade he had used to cut open the camera packaging. Seattle Police

Department Officer George Derezes, who had responded to Hernandez's 911 call, searched Worota and recovered the second camera and other accessories. In addition to the two cameras, Worota shoplifted a pair of tennis shoes, which he was found wearing.

The only item found on Gobena was an unopened package of camera wiring. Derezes compared the wiring to one of the stolen cameras and determined that they had the same brand name. Taken together, the two digital cameras and tennis shoes retailed for about \$385.

The State charged Gobena and Worota with second degree theft. At the bench trial, both defendants denied any wrongdoing. Worota claimed that his coat had been taken from him and that the cameras had been placed in his pockets. He offered no explanation about the knife blade and the tennis shoes. Gobena testified that no wiring or any other stolen item had been found on him. He further stated that he did not see Worota cutting open any packaging, removing any cameras, or trying on any shoes. Finally, he denied that he intentionally concealed any of Worota's actions.

After considering the evidence before it, the trial court held that Gobena had "acted in concert" with Worota to steal the three items from Costco. In so holding, the court questioned the credibility of the defendants, stating, "I don't find Mr. Worota's testimony or Mr. Gobena's testimony particularly persuasive under the circumstances." On the other hand, the court found the testimony of Hernandez, Hildwein, and Officer Derezes to be credible. The court sentenced

Gobena to perform 136 hours of community service with credit for time served.

Gobena appeals.

#### Analysis

Gobena challenges the sufficiency of the evidence supporting his conviction, arguing that the State did not prove beyond a reasonable doubt that he acted as Worota's accomplice.

In a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State. "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom."<sup>1</sup> Evidence is sufficient to support a conviction if any rational trier of fact could have found the essential elements of the charged crime proved beyond a reasonable doubt.<sup>2</sup> Circumstantial evidence and direct evidence are equally reliable.<sup>3</sup> We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.<sup>4</sup>

A person is guilty of second degree theft when he exerts unauthorized control over property belonging to another worth over \$250, with the intent to

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<sup>1</sup> State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

<sup>2</sup> State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006).

<sup>3</sup> State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

<sup>4</sup> State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

deprive the owner of that property.<sup>5</sup> To hold a person criminally liable as an accomplice, there must be a showing that he aided another person in committing a crime with knowledge that his actions would promote or facilitate the commission of the crime.<sup>6</sup> An accomplice does not need to know every element of the crime committed by the principal; general knowledge of the crime is

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<sup>5</sup> Under RCW 9A.56.020(1)(a), “theft” means “[t]o wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services.” Former RCW 9A.56.040(1)(a) (2007) provides that

[a] person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle.

In 2009, the legislature increased the threshold amount for second degree theft from \$250 to \$750. Laws of 2009, ch. 431, § 8.

<sup>6</sup> RCW 9A.08.020(3) states that

[a] person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he

(i) solicits, commands, encourages, or requests such other person to commit it; or

(ii) aids or agrees to aid such other person in planning or committing it.

And former RCW 9A.08.010(1)(b) (1975) provides that

[a] person knows or acts knowingly or with knowledge when:

(i) he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense.

sufficient.<sup>7</sup> Physical presence at a crime scene, however, is insufficient to convict someone as an accomplice unless there is also evidence of that person's readiness to assist.<sup>8</sup>

Gobena's principal argument is that the evidence is insufficient because it does not show that he intended to facilitate the thefts and shows only that he "was present at the scene and may have been aware of what was occurring." As support, Gobena relies on In re Welfare of Wilson.<sup>9</sup> There, a group of youths tied a rope around a tree, strung the rope across a road, and pulled the rope taut as cars approached.<sup>10</sup> The juvenile court convicted Wilson of reckless endangerment as an accomplice, reasoning that "the actual touching and pulling the rope was not necessary for [Wilson] to really contribute to what was happening."<sup>11</sup> Rather, the court based the conviction solely on Wilson's "participation in going to the scene, being with his friend, standing and being involved in the whole atmosphere of what was going on."<sup>12</sup> In reversing the juvenile court, our Supreme Court stated, "Presence at the scene of an ongoing crime may be sufficient if a person is 'ready to assist.'"<sup>13</sup> It concluded that there was nothing in the record indicative of Wilson's readiness to assist.<sup>14</sup>

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<sup>7</sup> State v. Roberts, 142 Wn.2d 471, 511-12, 14 P.3d 713 (2000).

<sup>8</sup> In re Welfare of Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979).

<sup>9</sup> 91 Wn.2d 487, 588 P.2d 1161 (1979).

<sup>10</sup> Wilson, 91 Wn.2d at 489.

<sup>11</sup> Wilson, 91 Wn.2d at 490.

<sup>12</sup> Wilson, 91 Wn.2d at 490.

<sup>13</sup> Wilson, 91 Wn.2d at 491.

<sup>14</sup> Wilson, 91 Wn.2d at 491.

Here, in contrast to Wilson, the record establishes that Gobena was present at the scene—and not only ready to assist—but actively assisting Worota. Hernandez and Hildwein both testified that Gobena participated in the theft of each camera by acting twice as a blocker.<sup>15</sup> In addition, an unopened package of camera wiring having the same brand name as one of the stolen cameras was found on Gobena. Because ample evidence supports that Gobena played a specific role in the camera thefts and that he concealed a camera accessory, Wilson is distinguishable.

In response, Gobena attempts to discount the weight of the evidence against him, arguing that there was no comparison made between the serial numbers on the wiring and the cameras. He also points to his own trial testimony, in which he denied intentionally concealing Worota's actions.

But these arguments ignore the deference we give to the trial court on issues of the persuasiveness of the evidence, conflicting testimony, and witness credibility. Here, the juvenile court determined that neither Gobena nor Worota were credible and that the State's witnesses were. The court also found persuasive the package of camera wiring found on Gobena as evidence of his participation in the thefts. Given the combined testimony of Hernandez, Hildwein, and Officer Derezes, as well as the package of camera wiring, we

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<sup>15</sup> Although Gobena assigns error to the court's finding that he acted as a blocker, substantial evidence supports it. Gobena's assignment of error to the court's finding that he engaged in nesting also fails. The court found that Worota, not Gobena, had used the nesting tactic in the theft of the second camera.

conclude that substantial evidence supports the trial court's factual findings and that these findings support the court's conclusion that Gobena acted as an accomplice to Worota's theft of the two cameras and tennis shoes.

Conclusion

We affirm the trial court's judgment, holding that the State presented sufficient evidence at trial to convict Gobena of second degree theft as an accomplice.

Leach, A.C.J.

WE CONCUR:

Meyer, J.P.T.

Dupre, C.J.